IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2026 OF 2005

Smt. Snehalata Shantaram Sawant ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri. N.N. Gawankar i/by Arfan Sait for the Petitioner.
Shri. K.V. Saste, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : AUGUST 29, 2005.

P.C.:

1. Heard the advocate appearing for the Petitioner and the learned A.P.P. for the State. The challenge in this Petition is to the order dated 17th August, 2005 by which the Application made by the Petitioner's son for grant of Furlough Leave under the Prisons (Bombay Furlough and Parole) Rules, 1959 has been rejected.

2. The learned A.P.P. has placed on record the adverse police report dated 19th July, 2005 on the basis of which impugned order has been passed. He submitted that in view of the adverse police report, the competent authority was justified in rejecting the Application. He, therefore, submitted that the Petition may be rejected.

3. It is not in dispute that by order dated 19th December, 2002 passed by this Court in Criminal Application No.1730 of 2002, furlough leave was granted in favour of the son of the Petitioner.

Moreover, by order dated 08th January, 2003, this Court extended the said furlough leave. The learned A.P.P. has not disputed that the Petitioner's son surrendered before the expiry of furlough leave which was granted earlier. It is not the case made out by the Respondent in this Petition that when he was enlarged on furlough leave earlier, the son of the Petitioner has taken undue advantage of the libery. Apart from grant of furlough leave, it appears that by order dated 12th February, 2004 Parole leave was granted in favour of the Petitioner.

4. The police report records that the surety offered by the Petitioner's son is residing in Mumbai. Surety is the elder son of the Petitioner who is not staying at the place of residence of the Petitioner. The police report does not state that brother of the Petitioner is otherwise disqualified to offer himself as surety. The Petitioner is residing at Kandivali and the person who is offered as surety by the son of the Petitioner is residing at Andheri, Mumbai. In the facts of this case, the Application for furlough leave could not have been rejected only on the ground that the place of residence of the surety offered by the Petitioner's son is different from the place of residence of the Petitioner. The second ground mentioned in the report is that the allegation against the Petitioner is that he opened fire against the

gangster in the court premises of Sessions Court at Mumbai. It is pertinent to note that notwithstanding this fact, this Court directed to release the son of the Petitioner on furlough leave and the said furlough leave was extended by the orders of this Court.

5. In my view, the order impugned is unsustainable and the same deserves to be quashed and set aside. Hence, I pass the following order:

: O R D E R :

i) The order dated 17th August, 2005 is quashed and set aside.

ii) The Application for Furlough Leave dated 16th April, 2005 made by the Petitioner shall be considered by the competent authority favourably by passing appropriate order within a period of two weeks from today.

iii) Parties to act upon an authenticated copy of this order.

JUDGE